

E-filed 4/14/08

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Attorneys for Defendants

12 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 **SAN JOSE DIVISION**

14 **PHASE FORWARD INCORPORATED, a)**
 15 **Delaware Corporation,)**

16 **Plaintiff,)**

17 **v.)**

18 **MARY NOEL ADAMS, individually and)**
 19 **d/b/a PHASE FORWARD, and PHASE)**
 20 **FORWARD LLC, a California Limited)**
Liability Company,)

21 **Defendants.)**

CASE NO. 05-4232 JF (HRL)

The Honorable Jeremy Fogel

REQUEST, STIPULATION,
DECLARATIONS AND [PROPOSED]
ORDER POSTPONING TRIAL AND
PRETRIAL CONFERENCE

Scheduled Trial Date: May 27, 2008
 Courtroom Three, 5th Floor

22
 23 Plaintiff Phase Forward Incorporated ("PFI") and Defendants Mary Noel Adams and

24 Phase Forward LLC (collectively, the "parties"), by and through their undersigned counsel and
 25 pursuant to Local Rules 6-1(b) and 6-2, hereby stipulate and jointly request that the Court
 26 postpone Trial of, and the Pretrial Conference for, this matter (and all attendant deadlines
 27 relating thereto, as set out in the Court's Standard Pretrial Order, effective Feb. 24, 2006) to
 28 dates to be determined after further consultation between the parties and the Court.

DECLARATION

I, M. Kelly Tillery, declare as follows:

1. I am an attorney duly admitted to practice law in the Commonwealth of Pennsylvania. I am also admitted *pro hac vice* to the U.S. District Court for the Northern District of California, Civil Case No. 05-4232 JF (HRL), and in such capacity I serve as PFI's lead counsel. I have personal knowledge of the facts set forth in this Declaration (unless otherwise indicated) and if called as a witness could and would so testify.

2. During a March 14, 2008 telephonic status conference, the Court scheduled the first day of Trial in this matter for Tuesday, May 27, 2008 in San Jose, California and a Pretrial Conference for Friday, May 9, 2008. In the status conference, the parties' respective lead counsel agreed that Trial will last at least two to three days in the last week of May 2008.

3. Martin Young, PFI's Vice President of Corporate Development and a key witness in PFI's case, has developed an irreconcilable conflict and is unavailable to testify at Trial in San Jose during the last week of May 2008.


4. As PFI's senior executive in charge of marketing and mergers and acquisitions, Mr. Young is in a unique position to testify to the creation, maintenance, and efforts to protect PFI's Trademarks, as well as other more general corporate matters relevant to PFI's case. However, due to his position Mr. Young is required to attend a series of meetings at PFI's Waltham, Massachusetts headquarters—meetings to which global employees are flown in from diffuse locations worldwide. One of these meetings has been scheduled for May 27, 2008, and Mr. Young's attendance is critical.

5. PFI will not be able to postpone or reschedule this meeting without enormous difficulty, expense, and inconvenience.

6. Meanwhile, Mr. Young's testimony is vital to PFI's case and the absence of his testimony at Trial would severely prejudice PFI in the prosecution of its case.

7. I have advised Defendants' counsel of Mr. Young's unavailability and of Mr. Young's value to PFI's case.

9. I agree that postponement of the dates for the beginning of Trial and the Pretrial Conference will only affect those events and the deadlines for certain ancillary matters such as submission of witness lists, filing of motions *in limine*, and the time of Jury selection.


M. Kelly Tillery ex rel. M.
Kelly Tillery

I, Matthew Stavish, declare as follows:

2. During a March 14, 2008 telephonic status conference, the Court scheduled the first day of Trial in this matter for Tuesday, May 27, 2008 in San Jose, California and a Pretrial Conference for Friday May 9, 2008. In the status conference, the parties' respective lead counsel agreed that Trial will last at least two to three days in the last week of May 2008.

4. The court in Rally Manufacturing, Inc. v. Pylon Manufacturing Corp., Civil Action No. 07-21150 Civ King/Garber has scheduled a two-to-three week trial to begin June 9,

1 2008. The Court recently denied my client's request to consolidate this case with a later filed
2 case and also refused to postpone the June 9, 2008 trial date.

3 5. Rally Manufacturing, Inc. v. Pylon Manufacturing Corp., Civil Action No. 07-
4 21150 Civ King/Garber involves technologically complex subject matter that will require my
5 devotion of substantial time to case preparation in the week preceding trial.


6 6. Because the instant case is currently scheduled for the last week of May 2008,
7 my obligation to devote substantial time to preparing for trial in Rally Manufacturing, Inc. v.
8 Pylon Manufacturing Corp., Civil Action No. 07-21150 Civ King/Garber will render me
9 effectively unable to try the instant case. My inability to participate in Trial in this case, in
10 turn, would severely prejudice Defendants in their ability to prosecute their case.

11 7. I have advised PFI's counsel of Court refusal to postpone the pending trial in
12 Rally Manufacturing, Inc. v. Pylon Manufacturing Corp., Civil Action No. 07-21150 Civ
13 King/Garber and the requirement that I devote substantial time in the last week of May 2008 to
14 preparation for trial in that action.

15 8. There have been no previous time modifications to the Trial date in this case.

16 9. I agree that postponement of the dates for the beginning of Trial and the Pretrial
17 Conference will only affect those events and the deadlines for certain ancillary matters such as
18 submission of witness lists, filing of motions *in limine*, and the time of Jury selection.

19 I declare under penalty of perjury under the laws of the United States that the foregoing
20 is true and correct to the best of my knowledge, information, and belief, and that this
21 Declaration was executed at Bethesda, Maryland on this 9th day of April, 2008.

22
23 
24 Matthew Stavish

25 **STIPULATION**

26
27 For the reasons set forth above, the parties stipulate to postponing Trial of, and the
28 Pretrial Conference for, this case (and all attendant deadlines relating thereto, as set out in the

1 Court's Standard Pretrial Order, effective Feb. 24, 2006), and further jointly request,
2 respectfully, that the Court:

- 3 (1) permit the parties 10 days from the date of entry of the Order requested herein to
4 submit to the Court alternative proposed Trial dates for the Court's
5 consideration; and
6 (2) schedule and hold, at a time commensurate with the Court's convenience, a
7 telephone conference attended by the parties' respective counsel during which
8 new dates for Trial and the Pretrial Conference may be scheduled.

9 Respectfully submitted,

10 PEPPER HAMILTON, LLP

11
12 Date: April 9, 2008

13 By:



M. Kelly Tillery, Esquire
Attorney for Plaintiff

ex rel. M.
Kelly
Tillery

14
15 BERENATO, WHITE & STAVISH, LLC

16
17 Date: April 9, 2008

18 By:


Matthew Stavish, Esquire
Attorney for Defendants

19
20 **[PROPOSED] ORDER**

21
22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23
24 DATED: 4/14/08


JEREMY FOGEL
United States District Judge